

IN THE COURT OF APPEALS OF IOWA

No. 0-265 / 10-0469
Filed May 12, 2010

**IN THE INTEREST OF L.L.,
Minor Child,**

J.D.R., Mother,
Appellant.

Appeal from the Iowa District Court for Marshall County, Victor G. Lathrop,
Associate Juvenile Judge.

A mother appeals the juvenile court's order placing the child in family
foster care. **AFFIRMED.**

Denise Gonyea, Grinnell, for appellant mother.

Randal Giannetto, Marshalltown, for father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Jennifer Miller, County Attorney, and Joshua Vander Ploeg, Assistant
County Attorney, for appellee State.

Joanie Grife of Steffens & Grife, Marshalltown, for minor child.

Considered by Vaitheswaran, P.J., Doyle, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

DOYLE, J.

A mother appeals the juvenile court's order placing the child in family foster care. We affirm.

I. Background Facts and Proceedings.

J.R. is the mother and J.L. is the father of L.L., born in June 1998.¹ The parents never married, and they separated when the child was approximately six months old. Following a contested custody trial, the child was placed in the father's care with the mother receiving visitation with the child.

The child was previously sexually abused while in the mother's care by a relative of a friend of the mother. The mother was unaware that the relative was a danger to the child, and there was no finding of child abuse against the mother for the incident. Following the incident, the mother received in-home services.

At some point, the mother's house was flooded and began growing black mold. The mother and her husband and other child moved into a hotel room while the house was being renovated. When L.L. visited the mother, L.L. would stay in the mother's hotel room.

The child came to the attention of the Iowa Department of Human Services (Department) in June 2009, after it was reported that the father had abused the child. The child was temporarily removed from the father's care and placed with the mother. The father was granted visitation with the child.

On June 22, 2009, the State filed a petition alleging the child to be a CINA. An adjudicatory hearing was held on July 21, 2009. There, the mother and child admitted the allegations contained in the petition. The father denied the

¹ The father does not appeal the juvenile court's order.

allegations but did not resist the entry of an order of adjudication. Following the hearing, the juvenile court entered an order adjudicating the child a CINA and setting the matter for a dispositional hearing.

Prior to the dispositional hearing, the Department began increasing the father's visitation with the child. On approximately August 11, 2009, the child was returned to the father's custody. The mother resisted returning the child to the father's care and subsequently filed her "opposition to placement and request for hearing."

At a September 1, 2009 dispositional hearing, the Department recommended that the child be returned to the father. The State, the child's guardian ad litem, and the father joined in the recommendation. The mother resisted and requested the child instead be placed with her or in family foster care.

Following the hearing, the juvenile court entered a dispositional order returning the child to the father's care. The court explained:

After hearing all testimony offered and reviewing the exhibits offered, the court does not find evidence that would warrant continued removal under [Iowa Code] section 232.102 [(2009)]. What the court does find is an 11-year old [child] who is caught between parents that continue to fight their [custody] battle and [the child] may now be learning how to manipulate [the] parents to achieve [the child's] own ends.

Neither parent is innocent in this process, but the court has its biggest concern for [the mother's] well-being. She is a nice-looking person who makes a good first impression, but after listening to her for a while one begins to wonder about the credibility of her statements. . . . One police officer is to have reported to the [Department's case worker] that the parents fight a lot during visitation exchanges with [the child] present to the point where both sides video record the exchanges for their own safety.

The court ordered the child to participate in individual therapy, the child and parents to participate in family therapy, the child and mother to complete mental health evaluations, and the mother to comply with the terms of the parties' custody decree. The court scheduled a future hearing to determine the appropriateness of the existing CINA dispositional order.

By December 2009, the relationship between the child and the father had deteriorated. The father voluntarily placed the child in the custody of the Department, and in January 2010, the court entered an order formally transferring custody to the Department for placement in foster care. The child was initially placed in shelter care and then later placed in family foster care. In February 2010, the mother filed a motion for concurrent jurisdiction "so that issues of child custody and support may be litigated" in the district court.

On February 16, 2010, hearing was held on the mother's motion and for the determination of the appropriateness of the existing CINA dispositional order. The Department recommended the child be placed with the mother instead of foster care. The State ultimately found that placement with the mother would be appropriate, and the State did not take a position on the mother's request for concurrent jurisdiction. The State explained in its closing: "I don't know that there's a good answer here. I've kind of felt since the start that this was a bad custody case masquerading as a juvenile court case." The child's guardian ad litem agreed that the child should be placed in the mother's care, because the child could not be returned to the father. The child's attorney, the child, and the mother agreed with the recommendation. The father acknowledged that the child

could not be returned to his care at that time, but resisted placement with the mother and requested the child's placement in foster care be continued.

Both parents testified, and both parents blamed the other for problems concerning the child. Both parents testified they had safety concerns regarding placement of the child in the other's care, and both parents accused each other of disparaging the other in the child's presence. The father testified that approximately thirty different child abuse investigations had been initiated by the mother against him. The mother acknowledged that she had requested a number of child abuse investigations be conducted upon the father for abuse and that none of the investigations determined her reports to be founded. Both parents acknowledged they had had trouble with the child.

The Department's caseworker described the child as lying, manipulative, and conniving and testified that such behaviors occurred in the home of the father, mother, and in family foster care. The worker testified that the mother had been cooperative with services, while the father's cooperation had declined after the child had been voluntarily placed in foster care. The worker testified that the mother's living situation in the hotel was a safe place for the child to be staying. The worker testified that she believed the child's being in a home setting would be the key to helping the child address the child's mental health and other issues.

The child's psychological evaluation report was admitted into evidence.

The report stated, among other things:

The results of the psychological testing painted a picture of a [child] who is suffering significantly from anxiety, worry, and loneliness given [the child's] perception that [the child] will be rejected by others. It is possible that [the child] possesses symptoms of anxiety and depression independent from the stressful things that

have happen[ed] in [the child's] life. However, it is quite likely that [the child's] experience of chronic parental fighting has been the primary source of anxiety and stress in [the child's] life. . . .

. . . .
The results of the psychological testing provided significant support for anxiety, low self-esteem, and negative thinking. While [the child] clearly wants to be accepted by others, the result of the psychological testing suggested that [the child's] irritability and mild depression interfere with [the child's] making the connections [the child] longs for. [The child] may be prone to anxiety and depression symptoms given a family history for [them]. However, it is quite likely that [the child's] history of being exposed to bitter conflict between [the] parents and escalating conflict in the home of [the] father has been stimulating significant psychological distress.

The child's psychologist recommended that the parents participate in psychological evaluations, and the psychologist recommended that the child be returned to the father's care at that time with services in place.

On March 9, 2010, the juvenile court entered its order, finding that family foster care was the least restrictive placement in the child's best interests. The court explained:

[F]amily foster care . . . provides [the child] a neutral living environment in which [the child] can be an 11-year-old [child] and can concentrate on [the child's] own issues without continuing to be in the center of parents' constant conflict. For those same reasons, the court declines to exercise its discretion to authorize concurrent jurisdiction at this time. The court is convinced that litigation over the custody of the [child] will continue in the future, but for now this court can give [the child] some time to heal before the next round occurs.

As the State pointed out in closing arguments, it is difficult to assess the credibility of either the father, mother, or child in this matter. While this action may have started out as not much more than a custody dispute, it now is clear that the constant conflict has taken its toll on [the child], and the need for juvenile court involvement to assist this family is present.

The mother now appeals.

II. Scope and Standards of Review.

Our review of child in need of assistance proceedings is de novo. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We review both the facts and the law and adjudicate rights anew. *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999). We give weight to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but are not bound by those findings. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). Our ultimate concern is with the best interests of the child. *In re J.E.*, 723 N.W.2d 793, 800 (Iowa 2006).

III. Discussion.

A. Placement in Family Foster Care.

On appeal, the mother argues that the least restrictive dispositional order considering the circumstances of the case was to place the child with the child's mother, rather than placement in family foster care. We disagree.

In enacting chapter 232 the legislature enunciated the purposes of the chapter in providing it

shall be liberally construed to the end that each child under the jurisdiction of the court shall receive, preferably in the child's own home, the care, guidance, and control that *will best serve the child's welfare* and the best interest of the State.

Iowa Code § 232.1 (emphasis added). Following a dispositional hearing, the juvenile court must make "the least restrictive disposition appropriate considering all the circumstances of the case." *Id.* § 232.99(4). The alternative dispositions "are listed in sections 232.100 to 232.102 in order from least to most restrictive." *Id.* "Whenever possible, the court should permit the child to remain at home with the child's parent, guardian, or custodian." *Id.* § 232.102(5)(a). If continued

placement with the parent, guardian, or custodian is not possible, the court may enter an order transferring the legal custody of the child for purposes of placement to:

(a) A parent who does not have physical care of the child, other relative, or other suitable person.

(b) A child-placing agency or other suitable private agency, facility, or institution which is licensed or otherwise authorized by law to receive and provide care for the child.

(c) The department of human services.

Id. § 232.102(1). Our supreme court has stated that “[t]he home of a relative is considered less restrictive than placement in a private agency, facility or institution or placement with the department of human services. Thus, chapter 232 favors relative placements over nonrelative placements.” *In re N.M.*, 528 N.W.2d 94, 97 (Iowa 1995) (citations omitted).

Although a close call, we agree with the juvenile court that placing the child in family foster care was the least restrictive disposition appropriate considering all the circumstances of the case. Here, the father has physical custody of the child, and the goal of the CINA case is reunification of the child with the father. The testimony and exhibits at the hearing unfortunately evidence that the mother does not support reunification with the father. It is true that both parents have put the child in the center of their conflict, and the child has paid the price. A child’s safety and need for a permanent home are the primary concerns in determining the child’s best interests. *Id.* at 801 (Cady, J., concurring specially). In considering what will best serve the child’s welfare and all the circumstances of the case, we agree with the juvenile court’s order placing the child in family foster care.

B. Concurrent Jurisdiction.

A party may seek permission to “litigate concurrently in another court a specific issue relating to the custody, guardianship, or placement of the child who is the subject of the action.” Iowa Code § 232.2(2). On our de novo review, we see no reason to disturb the juvenile court’s ruling that denied concurrent jurisdiction. The court expressly considered the child’s best interests, especially given the parents’ contentious relationships and disparaging of the other to the child. See *In re R.G.*, 450 N.W.2d 823, 825 (Iowa 1990) (stating ruling on motion should focus on child’s best interests). This consideration fully justifies the denial of concurrent jurisdiction at this time. We accordingly affirm the juvenile court’s conclusion that it is in the best interests of this child to deny concurrent jurisdiction.

IV. Conclusion.

In considering what will best serve the child’s welfare and all the circumstances of the case, we agree with the juvenile court’s order placing the child in family foster care. Additionally, we agree with the juvenile court’s conclusion that it is in the best interests of this child to deny concurrent jurisdiction. We accordingly affirm the juvenile court’s order.

AFFIRMED.